20.12.2007. Present: Mr. Romesh Verma, counsel for the petitioners.

Mr. Sanjeev Sharma, counsel for respondent Nos. 1 to 3.

CMP(M) No. 408/2007.

Heard learned counsel for the parties. I am satisfied that the delay in filing the appeal is bonafide and is not of such a nature which would disentitle the applicant from claiming the benefit of Section 5 of the Limitation Act. This application is accordingly allowed and the delay in filing the appeal is condoned. This application is disposed of.

Civil Revision. 86 of 2007.

Heard learned counsel for the parties. The defendants are aggrieved by the order of the learned trial court dismissing their application under 7 Rule 11 of the Code of Civil Procedure which has been filed by them stating that the suit filed by the plaintiffs is not maintainable. The application was resisted by the plaintiff- respondents. The learned trial court, by a detailed order dismissed the application holding therein that the allegations made by the defendant in the application to the effect that the previously instituted suit debars the plaintiff from claiming relief in the present suit, requires investigation of facts.

I have gone through the record of the case. I do not find that the judgment and order of the learned trial court suffers from any illegality requiring interference of this court in its revisional jurisdiction. In the facts and circumstances of the case, maintainability of the suit can

be judged only after evidence has been brought on the record which has been rightly held by the learned trial court. Whether the previous decree debars the plaintiff from instituting the present suit or not would be a matter of evidence.

In these circumstances, I do not find any merit in the submission made by the learned counsel for the petitioners. This revision petition is accordingly dismissed. There shall be no order as to costs. Parties are directed to appear before the learned trial court on 3rd January, 2008. Records of the trial court be sent back immediately.

20th December, 2007. **(Dev Darshan Sud)**
(cm) **Judge.**